



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

DAVID PASCHAL
HILLIARD DRUGS INC
PO DRAWER 40
KERENS TX 75144

Carrier's Austin Representative Box

Box Number: 01

Respondent Name

AMERICAN INTERSTATE INSURANCE

MFDR Date Received

AUGUST 14, 2012

MFDR Tracking Number

M4-12-3580-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "We are unable to get the carrier to respond to repeated inquiries to adjudicate, finally, these claims. They have paid some claims on this injured employee but after repeated submissions these claims are still not paid. The adjuster has changed since the original claim was filed and numerous phone calls have gone out to the processing company and the original adjuster. I have spoken to the new adjuster on the telephone once and have emailed her 4 times regarding these claims. She has responded once to my emails. She states that she will review the file and see where to go from there but I have contacted her, by email, 3 times since with no reply. This is a failure to pay/respond issue. We are unable to get any further data regarding these claims from the carrier."

Amount in Dispute: \$868.75

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "We are in receipt of the MDR shown above for non-payment of services rendered by Hilliard Drugs. As shown in the included documentation, one of these services were paid to our Pharmacy Benefit Management (PBM) vendor, who paid the vendor and the other 3 were denied for reasons shown below."

Response Submitted by: Amerisafe Risk Services Inc., 2301 Hwy 190 West, DeRidder, LA 70634

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
November 7, 2011 December 5, 2011 January 6, 2012	Lidoderm 5% Patch	\$810.15	\$0.00
November 21, 2011 January 6, 2012	Hydrocodone/APAP 1-/325 Tablet	\$58.60	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307, effective May 25, 2008 33 Texas Register 3954 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.530, effective September 1, 2011, sets out the requirements for use of the Close Formulary for Claims not subject to Certified Networks.
3. 28 Texas Administrative Code §134.503, effective January 3, 2002; amended to be effective March 14, 2004, sets out the reimbursement for the pharmaceutical services in dispute.
4. 28 Texas Administrative Code §133.10 sets out the procedures for required billing form/formats.
5. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - 18 – Duplicate Claim /Service
 - 62 – Payment denied/reduced for absence of, or exceeded, pre-certification/authorization.

Issues

1. Was the requestor required to obtain preauthorization for certain prescriptions dispensed?
2. Was the requestor required to use the dispensed as written code (DAW)?
3. How is reimbursement established for the service(s) in dispute?
4. Did the requestor support its request for additional reimbursement?

Findings

1. Reimbursement for Lidoderm 5% Patch for dates of service November 7, 2011 and December 5, 2011 were denied by the insurance carrier for absence of preauthorization. In accordance with 28 Texas Administrative Code §134.530(a) and (b)(1)(A through C), the closed formulary applies to all drugs that are prescribed and dispensed for outpatient use for claims not subject to certified network on or after September 1, 2011 when the date of injury occurred on or after September 1, 2011. Preauthorization is only required for drugs identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG)/Appendix A, ODG Workers' Compensation Drug Formulary, and any updates; any compound that contains a drug identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG)/Appendix A, ODG Workers' Compensation Drug Formulary, and any updates; and any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(A). Review of the ODG finds that Lidoderm 5% Patch is an "N" drug and requires preauthorization. Documentation submitted by the requestor has not established that preauthorization was obtained for these dates of service, therefore, reimbursement is not recommended.
2. The requestor dispensed and billed Lidoderm 5% Patch and Hydrocodone/APAP 10/325 on January 6, 2012; on February 7, 2012, the insurance carrier contacted the requestor in writing stating "The bill was not submitted in accordance to the Texas Division of Workers' Compensation rules. The following information needed is described below: **-Box 19 Must be completed if a Brand was dispensed and the physician indicated Dispensed as Written or the Injured Employee requested the Brand.**" In accordance with 28 Texas Administrative Code §133.10(f)(3) the following data content or data elements are required for a complete pharmacy medical bill related to Texas workers' compensation health care: (P) dispensed as written code (DWC-066/field 19) is required. Review of the DWC-66 submitted by the requestor shows that box 19 for the Lidoderm 5% Patch was completed with a "Yes" and box 19 of the Hydrocodone/APAP 10/325 was not completed. Therefore, reimbursement cannot be recommended.
3. On November 21, 2011, the requestor dispensed Hydrocodone /APAP 10/325 to the injured employee. The insurance carrier denied the service using denial code 18 - "Duplicate Claim /Service." Review of the information submitted by both parties shows that the respondent has not submitted sufficient documentation to support the bill submitted by the requestor was a duplicate billing. Therefore, the disputed services were reviewed in accordance with the Statute and rules in effect at the time the services were rendered.

Reimbursement for the service in dispute may be established by applying 28 Texas Administrative Code §134.503, effective from October 23, 2011, which states, in pertinent part:

- (a) Applicability of this section is as follows:
 - (1) This section applies to the reimbursement of prescription drugs and nonprescription drugs or over-the-counter medications as those terms are defined in §134.500 of this title (relating to Definitions) for outpatient use in the Texas workers' compensation system, which includes claims:
 - (A) subject to a certified workers' compensation health care network as defined in §134.500 of this title;
 - (B) not subject to a certified workers' compensation health care network; and
 - (C) Subject to Labor Code §504.053(b)(2).
 - (2) This section does not apply to parenteral drugs.
- (b) For coding, billing, reporting, and reimbursement of prescription drugs and nonprescription drugs or over-the-counter medications, Texas workers' compensation system participants shall apply the provisions of Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits—Guidelines for Medical Services, Charges, and payments, respectively).
- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
 - (1) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed.
 - (A) Generic drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee = MAR;
 - (B) Brand name drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee = MAR;
 - (C) When compounding, a single compound fee of \$15 per prescription shall be added to the calculated total for either paragraph (a)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider;

Review of the explanation of benefits, position statements, and other documentation provided by the parties finds that: (1) no contract exists between the parties; and that (2) there are no denial codes or assertions refuting that the amount charged is the usual and customary amount. Consequently, the MAR in this medical fee dispute is established by determining the lesser of the charged amount and the AWP formula pursuant to 28 Texas Administrative Code §134.503(c)(1).

28 Texas Administrative Code §134.503(c)(1) (effective October 23, 2011) states, in pertinent part, that "The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed."

The Pharmacy Fee Guideline establishes that the Division expects AWP prices to be updated daily. Because the requestor has the burden of proof in this medical fee dispute, it must provide evidence to support that any asserted AWP values used to calculate reimbursement pursuant to §134.503(c)(1) were in effect on the day the disputed drug was dispensed. A mere assertion of the rate in effect on the day that the drug is dispensed is not sufficient.

4. The pharmaceutical in dispute was dispensed on November 21, 2011. After thorough review of the information and documentation provided by the parties, the Division finds:
 - The respondent did not provide any evidence to support the asserted Redbook AWP or effective date.
 - The requestor did not provide any evidence to support the AWP or effective date.

The requestor did not support the average wholesale price for the prescription dispensed for that reason, the Division concludes that the requestor is not entitled to reimbursement.

Conclusion

For the reasons stated above, the division finds that the requestor has not supported its request for reimbursement. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §§413.031 and 413.019 (if applicable), the division has determined that the requestor is not entitled to reimbursement for the services involved in this dispute.

Authorized Signature

		March 28, 2014
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.